

## LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

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for October 26, 2005 PLANNING COMMISSION MEETING

**PROJECT #:** Special Permit #05048

**PROPOSAL:** Allow the reconstruction of a nonconforming commercial use within a residential district.

**LOCATION:** 4<sup>th</sup> and "F" Streets

**WAIVER REQUEST:**

1. Allow a reduction of the rear yard setback from 28.4 feet to 1 foot for new construction.
2. Allow a reduction in front and side yard setbacks to allow the continued use of an existing building.

**LAND AREA:** 35,500 square feet, or 0.8 acre, more or less.

**CONCLUSION:** The Urban Development Department purchased this property as part of a relocation agreement with the previous owner. Due to site conditions, the Urban Development Department is unable to use public funds to develop this property as intended with residential uses. Meetings with neighborhood residents revealed a preference for a less intensive commercial user over additional rental dwellings. However, approval of this permit will perpetuate a nonconforming use within a residential area. Therefore, approval should be based upon specific conditions as outlined in this report.

<b><u>RECOMMENDATION:</u></b>	Conditional Approval
Waivers:	
1. Allow a reduction of the rear yard setback from 28.4 feet to 1 foot for new construction.	Denial
2. Allow a reduction in front and side yard setbacks to allow the continued use of an existing building.	Approval

**GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** Lots 1-5, Block 172, Original Lincoln, located in the SW 1/4 of Section 26 T10N R6E, Lancaster county, Nebraska.

**EXISTING LAND USE AND ZONING:**

Single-family dwelling and vacant commercial building R-4 Residential

**SURROUNDING LAND USE AND ZONING:**

North:	Single- and two-family dwellings	R-4 Residential
Further North:	Industrial	I-1 Industrial
South:	Single- and two-family dwellings	R-4 Residential
East:	Single- and two-family dwellings	R-4 Residential
West:	Single- and two-family dwellings	R-4 Residential

**ASSOCIATED APPLICATIONS:** CPC #05013

**HISTORY:**

- Apr 1989 Special Permit #963B approved the expansion of the nonconforming food processing facility to include a lot with an existing residence to be used as an employees break room.
- May 1983 Special Permit #963A approved the expansion of the nonconforming food processing facility to allow the construction of a plant equipment and mechanical room and offices.
- Oct 1981 Special Permit #963 approved the expansion of the nonconforming food processing facility to allow the construction of a loading dock.
- Apr 1981 Special Permit #934 approved the expansion of the nonconforming food processing facility to allow the construction of a boiler room.
- Jul 1979 Change of Zone #1708 changed the zoning on this property from I-1 Industrial to R-4 Residential.
- May 1979 The zoning update changed the zoning on this property from K Light Industrial to I-1 Industrial.

**COMPREHENSIVE PLAN SPECIFICATIONS:** The 2025 Future Land Use Plan shows this area as Urban Residential. (F 25)

**Small Business** - Our economic development team should always be cognizant of the role small business plays in our community. Recruitment and promotion of our community must include the role of businesses with 50 or fewer employees. We need to foster new, and maintain existing small businesses. (F 11)

The community continues its commitment to neighborhoods. Neighborhoods remain one of Lincoln's great strengths and their conservation is fundamental to this plan. The health of Lincoln's varied neighborhoods and districts depends on implementing appropriate and individualized policies. The Comprehensive Plan is the basis for zoning and land development decisions. It guides decisions that will maintain the quality and character of the community's established neighborhoods. (F 15)

***General Principles for All Commercial & Industrial Uses***

Commercial and industrial districts in Lancaster County shall be located:

- outside of saline wetlands, signature habitat areas, native prairie and floodplain areas (except for areas of existing commercial and industrial zoning)
- where urban services and infrastructure are available or planned for in the near term
- in sites supported by adequate road capacity – commercial development should be linked to the implementation of the transportation plan
- in areas compatible with existing or planned residential uses
- in areas accessible by various modes of transportation (i.e. automobile, transit and pedestrian)
- in a manner that supports the creation and maintenance of green space as indicated in the environmental resources section of this Plan. (F 38)

***Guiding Principles for Existing Neighborhoods***

- Preserve, protect, and promote city and county historic resources. Preserve, protect and promote the character and unique features of rural and urban neighborhoods, including their historical and architectural elements.
- Encourage a mix of compatible land uses in neighborhoods, but similar uses on the same block face. Similar housing types face each other: single family faces single family, change to different use at rear of lot. Commercial parking lots should not intrude into residential areas where residential uses predominate a block face.
- Require new development to be compatible with character of neighborhood and adjacent uses (i.e., parking at rear, similar setback, height and land use). (F 68, 69)

Revise standards to ensure that residential and commercial development more efficiently provide night time lighting without intruding on adjacent uses or casting significant lighting skyward. (F 72)

The demolition of significant historic properties and destruction of other sites and distinctive neighborhoods diminishes the character of our community. The Plan encourages the continued use and maintenance of historic resources, including properties not formally designated as landmarks. (F 141)

**TRAFFIC ANALYSIS:** South 4<sup>th</sup> and “F” Street are identified as local streets, both now and in the future. (E 49, F 103) Local streets provide the lowest level of mobility and generally exhibit the lowest traffic volumes. (F 105) South 3<sup>rd</sup> Street contains railroad tracks, South 4<sup>th</sup> Street is not paved, “F” street is paved.

**ENVIRONMENTAL CONCERNS:** This site is entirely located within the 100-year floodplain. Specific design considerations must be met for new construction on this property. Any development on this property will be required to maintain the amount of flood storage it currently provides.

**AESTHETIC CONSIDERATIONS:** Applicant proposes a site plan that includes extensive landscaping and screening, and retains an existing house on-site.

**ALTERNATIVE USES:** This property could be sold to a private developer for single- or two-family residential uses.

**ANALYSIS:**

1. This is a request for a special permit to allow the reconstruction of an existing nonconforming commercial use in a residential area, and its conversion to a more restrictive use.
2. The existing buildings, previously used for food processing, will be removed by the Urban Development Department, the property will be sold to a private party, and developed with a small retail shop and production greenhouses. The existing residential building will be retained, and used as an accessory structure for the commercial operation. It will not be used for residential purposes. This building is an important structure within the South Bottoms Historic District, although it is not listed individually.
3. LMC § 27.61.010 specifically allows a nonconforming use to be replaced with another nonconforming use provided the new use is of the same or a more restrictive category. Food processing is classified light industrial, while greenhouse is classified general commercial/retail, which is a more restrictive category.
4. The City acquired this property in September, 2005, with the intent to demolish the existing structure and redevelop the property with residential uses. The City has determined there are site conditions that prevent it from doing so as a public project. These site conditions include proximity to the railroad tracks, location in the floodplain, and underground contamination from a previous owner. See attached history provided by Applicant.
5. LMC § 27.63.280 provides that in all zoning districts, except the B-5 zoning district, a special permit may be granted to authorize the issuance of a building permit to permit the enlargement, extension, conversion, reconstruction or structural alteration of any building located upon a premises, the use of which constitutes a nonconforming use. In consideration of applications for such special permits, the following criteria shall be given specific consideration:

**(a) Effects on adjacent property, traffic, city utility service needs;**

The approval of the reconstruction and conversion of this non-conforming use to a less intensive use should improve its compatibility with the adjacent properties. Truck traffic should be reduced both in the size of trucks and in frequency, although retail vehicular traffic would increase. The existing large building will be replaced with smaller buildings, screening, and landscaping. The retail building is proposed to be designed with residential character consistent with homes in the area. Vehicular access should be limited to 4<sup>th</sup> Street to minimize disruption to homes along "F" Street.

**(b) Density of land use zoning for the subject property and adjacent property;**

This area is identified as urban residential, with a density range of 1 to 15 dwelling units per acre. The existing development pattern suggests a density on the low end of that range. The surrounding 9 city blocks contain approximately 134 dwelling units, for a density of 3.9 units per acre.

**(c) The degree of hardship upon the applicant which would be caused by failure to grant such a permit.**

Without approval of this permit, the Urban Development Department would own a parcel of land it cannot develop itself. The only option would be to sell it for private development. Selling the site for private development would likely result in the construction of rental dwellings, something the neighborhood opposes.

6. Watershed Management has the following comments:

- 6.1 Any future proposed new buildings on this site will be required to comply with regulations for construction of new structures in the 100-year floodplain as specified in Lincoln Municipal Code 27.52.
- 6.2 This area is in a portion of the Salt Creek floodplain that allows for only 25% of the flood storage volume on the site to be filled according to the existing Flood Insurance Study (FIS) for Salt Creek. However, the existing building was in place prior to the floodplain study currently in the FIS and it is proposed to be replaced with a building with a smaller footprint. We also understand that no additional fill is proposed on the site, because the building will either be floodproofed or constructed as a flow-through structure, if allowed per LMC 27.52. However, this information is not clear on the site plan.
- 6.3 The site plan should be revised as follows:
  - a) Show the footprint and square footage of the building to be removed.
  - b) Add an additional note indicating that the building footprint for the proposed greenhouse and retail use is smaller than the existing buildings to be removed, and no fill will be imported to the site. Thus, the new building will not impact any additional flood storage volume on the site beyond that taken by the existing building.
- 6.4 Watershed Management currently has a re-study of the Salt Creek floodplain underway. Preliminary results will not be available until approximately early December, 2005. Due to this, the applicant is advised that better information may be available for management of any proposed new construction after that time.

7. Development Services has the following comments:

- 7.1 The driveways will be required to be designed to commercial standards, and vehicle movements will need to be shown for the delivery vehicles anticipated to use the site such as vans, trucks or semis.

8. Building and Safety has the following comments:

- 8.1 All future development of the site must comply with the regulations for development in the 100-year floodplain as specified in LMC section 27.52.

9. LES has commented that any relocation of existing facilities will be at developer's cost.

10. Applicant has provided a development plan identifying specific landscaping and screening improvements, and has proposed to design the retail building with residential design characteristics. These plan elements are included in the conditions for approval as well.

11. The proposed drawings show a 5' side yard setback along the west, and 28.4' setback along the south. Applicant has asked for a waiver of setbacks to allow continued use of an existing building, and a rear yard setback waiver to allow new buildings to be located 1' off the south lot line. Planning Staff supports a setback waiver allowing the continued use of the existing building. However, the correct rear yard setback is 30'; if Applicant switches the side and rear yards, the buildings can be moved 4' north and all new construction will stay outside the setbacks.

**CONDITIONS OF APPROVAL:**

Site Specific:

1. This approval permits the reconstruction of a nonconforming use and its conversion to a more restrictive use, and a setback waiver as shown on the plans to allow the continued use of an existing building.

General:

2. Before receiving building permits:

- 2.1 The permittee shall complete the following instructions and submit 8 copies of the documents and plans to the Planning Department office for review and approval showing the following revisions:

- 2.1.1 Revise the site plan to show the side and rear yard setbacks such that all new construction stays within the buildable area of the site. Also identify the location of any future proposed buildings not already shown, and any additional parking they may require.
- 2.1.2 Revise the parking lot layout to provide vehicular access to South 4<sup>th</sup> Street only.
- 2.1.3 Add a note to the drawings indicating that the existing house will be retained and maintained in its current condition.
- 2.1.4 Add a note to the drawing stating the retail building will be constructed to match the residential design characteristics of the neighboring area. Either provide elevations of the proposed building or a list of design elements that will be met to accomplish this.
- 2.1.5 Provide a landscape and screening plan showing all proposed screening and landscaping located within view of adjacent properties.
- 2.1.6 Make revisions to the satisfaction of the Public Works and Building and Safety Departments as outlined in this report.
- 2.1.7 Add a note recognizing that any relocation of LES facilities will be at the owner's expense.

STANDARD CONDITIONS:

- 3. The following conditions are applicable to all requests:
  - 3.1 Before occupying these buildings, all development and construction is to comply with the approved plans.
  - 3.2 All privately-owned improvements, including landscaping and screening, are to be permanently maintained by the owner.
  - 3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
  - 3.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

- 3.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.
4. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by

Greg Czaplewski, 441-7620, gczaplewski@lincoln.ne.gov  
Planner

**Date:** October 13, 2005

**Applicant:** Marc Wullschleger, Director  
**and** Urban Development Department  
**Owner:** 808 "P" Street, Suite 400  
Lincoln, NE 68508  
441.7126

**Contact:** Steve Werthman, Housing Rehabilitation & Real Estate Manager  
Urban Development Department  
808 "P" Street, Suite 400  
Lincoln, NE 68508  
441.8621



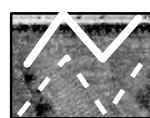
2005 aerial

## Special Permit #05048 305 & 345 'F' St.

### Zoning:

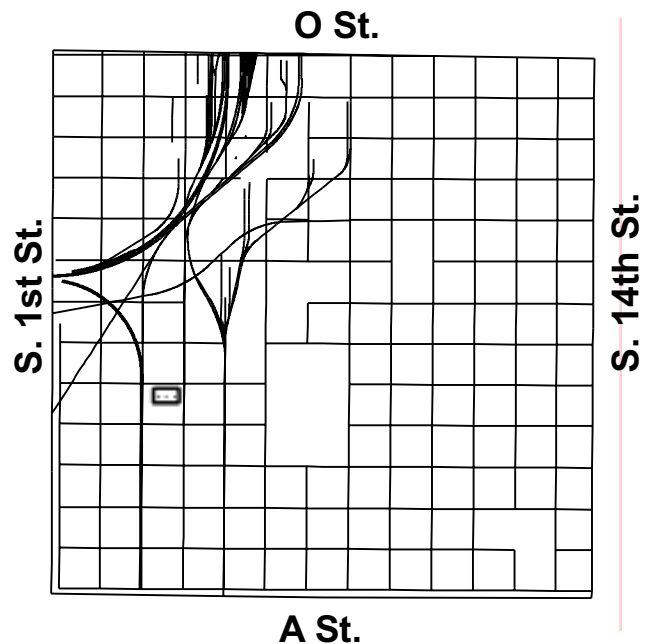
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile  
Sec. 26 T10N R6E



Zoning Jurisdiction Lines

City Limit Jurisdiction



# LEGAL DESCRIPTION

BLOCK 172, LOTS 1 THROUGH 5 INCLUSIVE  
ORIGINAL PLAT, LOCATED IN THE SW 1/4  
SECTION 26-T10N-R6E OF THE 6TH P.M.  
CITY OF LINCOLN, LANCASTER COUNTY,  
NEBRASKA.

AREA= 3,500.00 SF.± = 0.0815 AC.±

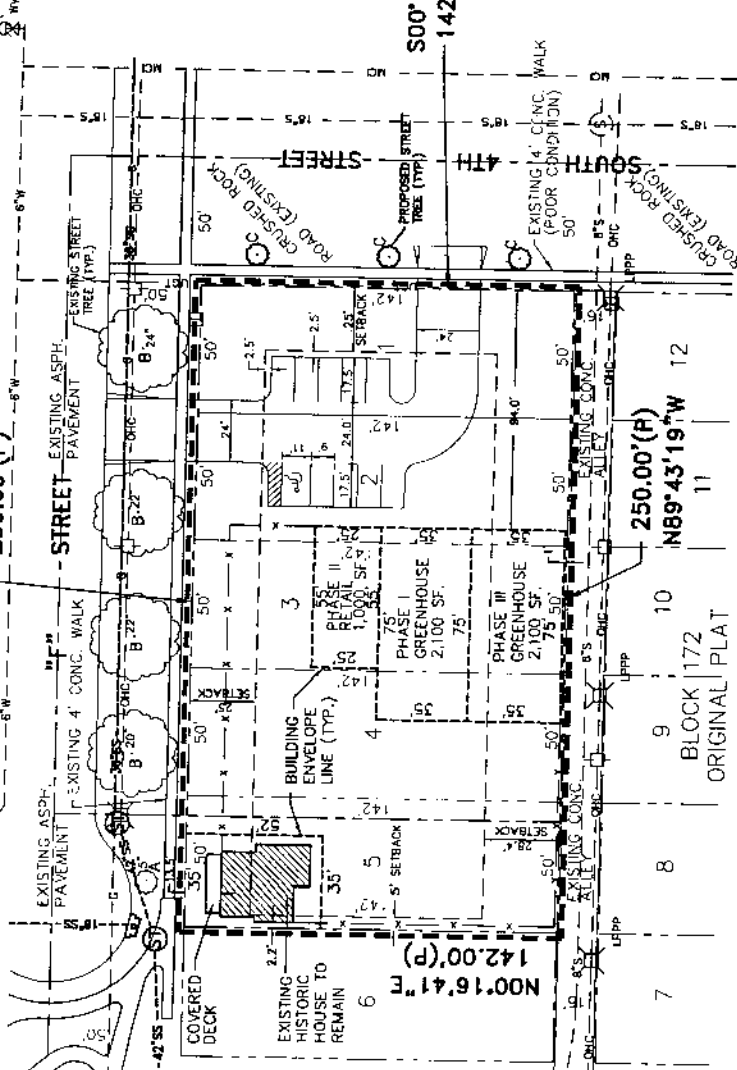
## OWNER

CITY OF LINCOLN  
CONTACT PERSON: STEVE WERTHMAN  
URBAN DEVELOPMENT DEPARTMENT  
HAYMARKET SQUARE  
808 "P" STREET, SUITE 400  
LINCOLN, NE 68508  
(402)441-8621

DEVELOPER  
RON HARVEY  
1738 SOUTH 27TH STREET  
LINCOLN, NE 68501  
(402)477-9030

SCALE: 1"=50'

S89°43'19"E  
250.00'(P)



## EXISTING STREET TREE SCHEDULE

KEY	LOCATION	COMMON NAME	BOTANICAL NAME	SIZE PLANTING	PLANTING METHOD	DESIGN SPRD. HT.	QUANTITY
A	"F" STREET	BRADFORD PEAR	Pyrus "Bradford"	X	B&B	15' 40'	1
B	"F" STREET	GREEN ASH	fraxinus pennsylvanica "Green"	1 1/2" cal.	B&B	35' 45'	4

## PROPOSED STREET TREE SCHEDULE

KEY	LOCATION	COMMON NAME	BOTANICAL NAME	SIZE PLANTING	PLANTING METHOD	DESIGN SPRD. HT.	QUANTITY
C	SOUTH 4TH STREET	PATMORE ASH	fraxinus pennsylvanica "Patmore"	1 1/2" cal.	B&B	35' 45'	3

## GENERAL NOTES:

1. PROPERTY IS CURRENTLY ZONED "R-4"
2. SETBACKS SHOWN ARE PER CURRENT ZONING REQUIREMENTS. THE EXISTING HOUSE AND BUILDINGS PRE-DATE THE CURRENT BUILDING SETBACK REQUIREMENTS.
3. EXISTING HISTORIC HOUSE TO REMAIN, ALL OTHER STRUCTURES TO BE REMOVED.
4. THERE IS AN EXISTING INDUSTRIAL BUILDING LOCATED 1' FROM THE REAR LOT LINE (ALLEY). THE PROPOSED PHASE II GREEN HOUSE SHALL BE BUILT 1' FROM THE REAR LOT LINE (WITHIN THE 28.4' SETBACK).
5. SCREENING ALONG THE WEST AND SOUTH PROPERTY LINES WILL BE WOOD PRIVACY FENCE. SCREENING ALONG THE NORTH LINE AND EAST LINE WILL BE A DECORATIVE FENCE.
6. THE PARKING LOT LANDSCAPE SCREEN PLAN WILL BE SUBMITTED, REVIEWED AND APPROVED AT THE TIME OF BUILDING PERMIT APPLICATION.
7. STREET TREES ALONG "F" STREET ARE EXISTING.
8. SIDEWALKS ALONG "F" STREET AND SOUTH 4TH STREET ARE EXISTING. THE SIDEWALK ALONG SOUTH 4TH STREET IS HEAVILY DAMAGED.

## LEGEND

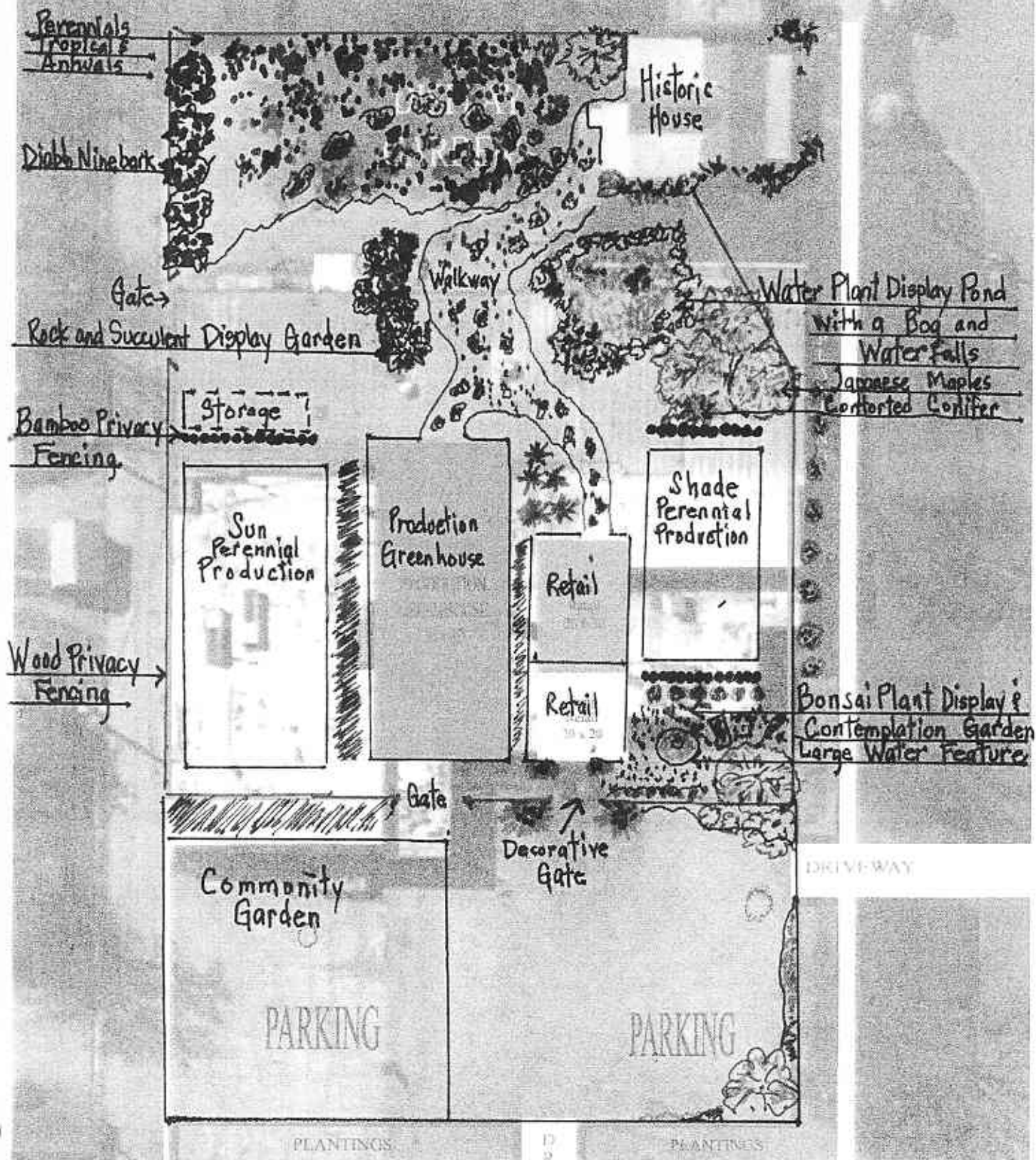
(S)	SANITARY SEWER MANHOLE	S	SANITARY SEWER LINE
(SS)	STORM SEWER MANHOLE	SS	STORM SEWER LINE
(C)	CURB INLET	W	WATER LINE
(P)	POWER POLE	G	GAS LINE
(T)	TELEPHONE PEDESTAL	OHC	OVERHEAD CABLE
(WV)	WATER VALVE	MC	UNDERGROUND FIBER OPTICS
(FHT)	FIRE HYDRANT		BUILDING LINE
(LPPP)	LIGHT POLE/POWER POLE	X	WOODEN FENCE
(G)	GUY WIRE	---	PROPERTY LINE
		○12"	DECIDUOUS TREE

# SPECIAL PERMIT SITE PLAN

OLSSON ASSOCIATES  
CONSULTING ENGINEERS

CONTACT MIKE JOHNSON (402)458-5625  
1111 Lincoln Mall, P.O. Box 84808, Lincoln, NE 68501

DWG. # XXXX





# CITY OF LINCOLN NEBRASKA

MAYOR COLEEN J. SENG

lincoln.ne.gov

Urban Development Department  
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Haymarket Square  
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Suite 400  
Lincoln, Nebraska 68508  
402-441-7606  
fax: 402-441-8711

## Purpose Statement

**An attachment to the City of Lincoln Zoning Application  
Submitted by Urban Development**

The current zoning of 305 and 345 F Street (legal description; Lots 1 through 5, Block 172, Original Lincoln, Lancaster County, Nebraska), which was the location of a meat processing plant called Arck Foods, is a special permit with industrial use. Urban Development would like to continue a special permit but with a less intensive use.

All other alternatives have been explored and in keeping with the wishes of the neighborhood would like to place a more neighborhood friendly business at this location.

The first alternative was residential use, however, several issues were raised during the exploration of this option. The environmental review, required by HUD, found contamination on two of the five lots. Another one of the lots contained a house which is part of the historic district. The proximity of the railroad tracks brought up concerns of noise and vibration. The flood plain was also an issue for locating any type of residential housing.

Inquiries were made into the possibility of land for the Parks and Recreation Department but a "mini-park" was not a practical or efficient budget alternative with Cooper Park only two blocks away.

Another alternative was to change the zoning to "B" or "I", however, that would open the possibility of an undesirable use of this land in the future. Industrial zoning was out of the question. If the site was currently zoned Industrial instead of a special permit with industrial use, then Arck Foods could have sold the property to a company with a more-intensive, less-desirable use.

For these reasons, Urban Development is proposing to continue a special permit for this site. At some point in the future, if this site is no longer used for what Urban Development is proposing, the decision for the future use would revert back to the City with the input of the neighborhood.

Urban Development is working with a retail greenhouse owner who wishes to move his business to Lincoln and this site fulfills his needs as well as the need of the area for a neighborhood friendly business.

## **History of the Economic Development Effort for the Site**

Starting in 2003, Darl Nauman and Troy Gagner, Economic Development Coordinators for the Mayor's Office and Urban Development Department respectively, began working with Cedar Hollow Foods (Arck Foods) in an effort to solve some of the problems the owners were experiencing at 4<sup>th</sup> & F Street.

Arck Foods wanted to expand their current operation which would increase the size of their building, add employees and increase the number of 18-wheelers delivering to the site. They had clearly outgrown this location and were receiving offers from other states to relocate their business.

The neighborhood had an expanding industrial site that was no longer a good fit for the area.

Darl and Troy were faced with the task of relocating this business to a more suitable area while, at the same time, keeping this thriving business in Lincoln.

Arck Foods has now been successfully relocated to 6240 McCormick Drive in Lincoln and 39 jobs were not only retained but another 20 jobs were created for the local economy. Clearly, the City of Lincoln has already obtained a benefit from this transaction.

The second part of the task is to find a neighborhood-friendly use for the old location.

The first alternative was residential use, however, several issues were raised during the exploration of this option. The environmental review, required by HUD, found contamination on two of the five lots. Another one of the lots contained a house which is part of the historic district. The proximity of the railroad tracks brought up concerns of noise and vibration. The flood plain was also an issue for locating any type of residential housing.

Inquiries were made into the possibility of land for the Parks and Recreation Department but a "mini-park" was not a practical or efficient budget alternative with Cooper Park only two blocks away.

Another alternative was to change the zoning to "B" or "I", however, that would open the possibility of an undesirable use of this land in the future. The neighborhood did not want just any business use on the property and industrial zoning was out of the question. If the site was currently zoned Industrial instead of a special permit with industrial use, then Arck Foods could have sold the property to a company with a more-intensive, less-desirable use.

This is the reason Urban Development is proposing to continue a special permit for this site along with its request for surplus.

At some point in the future, if this site is no longer used for what Urban Development is proposing, the decision for the future use would revert back to the control of the City with input

from the neighborhood.

Urban Development is working with a retail greenhouse owner who wishes to move his business to Lincoln and this site fulfills his needs as well as the need of the area for a neighborhood friendly business.

Here is a summary of the major issues that were considered to arrive at this proposal;

### **Flood Plain**

This business will have no net rise in regard to the flood plain as the 12,000 sq ft "footprint" of the Arck Foods building will be replaced with less than 5,000 sq ft. If the greenhouse is considered a flow-through structure, then the benefit to the flood plain will be even greater. The new owner will work with Public Works and Building & Safety on the retail structure (600 sq. ft.) for elevation/flood-proofing or a combination of both. The grade on the site will not change.

### **Environmental**

No structures will be placed on the contaminated area. The contamination will be capped with a parking lot (and a possible location for a trail head for the City bike trail) on the north half of Lot 1. The owner will further grant the City access to the property for monitoring of the contamination.

The greenhouse owner, in the conducting of his business, will have at any given time six 40lb bags of Peters 20-20-20 Fertilizer and uses insecticidal soap and horticultural oil to control insects.

### **Historic**

The existing house that was used as a break room by Arck Foods will be preserved by the new owner. The house's front and backyard area will be landscaped as an example of the products available from the greenhouse.

### **Neighborhood**

The Urban Development Department has met with the South Salt Creek Neighborhood Association and obtained their approval for the proposed use.

The neighbors will benefit from the reduction of truck traffic to the area and the removal of the Arck Foods building.

As previously discussed, ownership of this land by the Parks Department was not a practical alternative. However, the proposed gardens on the site will greatly enhance the neighborhood environment.

The Special Permit will prevent any future use of the land for anything except the proposed use.

### **Economic Development**

The City of Lincoln has already benefitted from the relocation of Arck Foods which retained 39 jobs and created an additional 20 jobs.

The greenhouse owner is a long time resident of Lincoln and has been waiting for the right opportunity to relocate. This proposal will add another small business to the community.